IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 89 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF WEALTH-TAX

Versus

SHAKUNTALABEN A PATEL

Appearance:

1. WEALTH TAX REFERENCE No. 89 of 1994

MR MAUNA BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 19/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following questions are referred for our opinion in respect of assessment years 1984-85 and 1985-86 :-

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the exemption u/s. 5(1)(xxxii) is allowable under the W.T. Act, 1957 ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the valuation of shares in the house properties in question, is to be assessed after adopting the mode of valuation of the properties according to the provisions of schedule-III of W.T. Act ?

3. Whether, the Appellate Tribunal is right in setting aside the issue of valuation properties ?

2. We have heard Mrs Mauna Bhatt, learned counsel for the applicant-revenue. Though served, none appears for the respondent-assessee.

3. As far as question No. 1 is concerned, the learned counsel for the revenue points out from the discussion in para 8 of the judgment of the Tribunal that the firm is engaged in the business, but it get the work done on job work basis from an outside agency. The learned counsel, therefore, relies on the decision of this Court in CIT vs. Mohinibai Kanaiyalal, (1999) 240 ITR 636 taking the view that if the firm is getting the work done by an outside agency, it cannot be said to be itself engaged in the manufacturing activity.

In view of the aforesaid fact and the aforesaid decision of this Court, we hold that the Tribunal has erred in law in holding that the exemption under Section 5(1)(xxxii) is allowable under the Wealth Tax Act, 1957.

Our answer to question No. 1 is in the negative i.e. in favour of the revenue and against the assessee.

4. Coming to question No. 2, our attention is invited to the decision of the Hon'ble Supreme Court in CWT vs. Sharvan Kumar Swarup & Sons, (1994) 210 ITR 886, taking the view that the Rules contained in Schedule III to the Wealth Tax Act are procedural in nature for the purpose of adopting the method of valuation of properties

and that, therefore, they are applicable to those proceedings pending on the date of insertion of the Rules.

Following the aforesaid decision, our answer to question No. 2 is in the affirmative i.e. in favour of the assessee and against the revenue.

5. Coming to the last question i.e. question No. 3, in view of the fact that the Tribunal has directed the valuation to be made in accordance with the Rules contained in Schedule III to the Wealth Tax Act, our answer to question NO. 3 is in the affirmative i.e. in favour of the assessee and against the revenue.

The reference is accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-